IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 1783 of 2001

Between:

The Executive Engineer,
N.S.Canals --I Division, ONGOLE,
Prakasham District.

..... PETITIONER

AND

1 Marripudi Subba Rao, S/o. Venkata Swamy,
Bandlamudi Post, Chimakurthi Mandal,
Parkasham District.
2 The Presiding Officer,
Industrial Tribunal --Cum-- Labour Court., Guntur,

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High
Court will be pleased to issue a Writ, order or direction in the
nature of Certiorary calling for the records pertaining to the Award,
dt. 20--7--2000 in I.D.No. 105/93 on the file of the Labour Court, Guntur and quash the same.

Counsel for the Petitioner: GP FOR IRRIGATION & COMM AREA DEV.

Counsel for the Respondent No.1: MR.CHALLARI NAGESWARA RAO

Counsel for the Respondent NO.2: G.P. for Labour

The Court made the following:

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ORDER:

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Challenging the award dated 20-07-2000 passed in I.D.No.105 of 1993 on the file of the Labour Court, Guntur, the Management preferred the present writ petition.

The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

The petitioner herein is the management. The first respondent herein is the workman who was appointed as Head Mazdoor in the petitioner's department at Chimakurti on

01-07-1983 and subsequently was transferred to Maddipadu Sub-Division on 01-09-1984. He stated that he worked there up to 27-03-1985 without any break of service. When he attended to duty on 28-03-1985, he was informed by the petitioner herein that he need not attend for duty and was also informed that his services were terminated with effect from that day. Challenging the action of the management, the workman-first respondent herein filed I.D.No.105 of 1993 on the file of the Labour Court, Guntur.

On behalf of the workman WWs.1 to 3 were examined and Exs.W1 to W6 were marked. On behalf of the management MW.1 was examined and Exs.M1 to M7 were marked. The Labour Court, after considering the material available on record, passed an award setting aside the termination of the applicant-first respondent herein with effect from 28-03-1985 and directing the respondent-petitioner herein to

reinstate the applicant into service with full

back wages from 29-03-1993 onwards till the date of reinstatement. Aggrieved by the same, the respondent therein preferred the present writ petition.

The Learned Government Pleader appearing for the petitioner contended that the findings of the Labour Court are based upon no evidence and that the first respondent failed to establish that he worked for more than 240 days continuously and the said burden was not discharged by the petitioner and there is no material evidence to prove the same and it is a clear case of abandonment by the first respondent and there was no termination and therefore he prays to set aside impugned award.

On the other hand, the learned counsel appearing for the respondents contended that basing on the evidence available on record, the Labour Court rightly ordered for reinstatement with full back wages and therefore the findings cannot be said to be perverse or contrary to the evidence on record and there are no grounds to interfere with the same.

The scope of judicial review to interfere with the subordinate Courts or Tribunals is confined only when there is error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard to the provisions of law and a grave injustice or gross failure of justice as occasion thereby.

While examining and scrutinizing the award under challenge, it becomes inevitable to appreciate the facts of the given case as otherwise that decision cannot be tested. To know whether the findings are based upon the evidence available on record or not, it is necessary to scrutinize the evidence on record.

It is the specific case of the first respondent herein who is the workman that he continuously worked from 01-07-1983 to 28-03-1985. But the petitioner herein

denied the same and contended specifically that the first respondent has not worked for more than 240 days. On the ground that the burden is on the petitioner herein to prove that the workman has not worked for more than 240 days and as the management did not produce any evidence, the finding has been given against the management-petitioner herein.

Learned counsel for the petitioner brought to the notice of this Court about a Division Bench judgment of this Court in **K.CHANDRAMMA v. LABOUR COURT-I** , which was relied upon by the Labour Court, wherein it was held:

> "The above two doctrines when combined to study the case of an illiterate woman, who is a sweeper and since she does not know to read or write and at the same time is not in the control of the evidence even in respect of her working continuously for 240 days, it appears to us to be reasonable to hold that grave injustice would be done if, without calling upon the respondent-employer to produce all the materials in support of its claim that the petitioner-appellant has not worked for 240 days continuously, the benefit of the claim should be given to her and she should be directed to be reinstated."

Whereas, in the decision reported in **RANGE FOREST OFFICER v. S.T.HADIMANI** , it was held:

> "For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision on this Court in *State of Gujarat V. Pratamsingh Narsingh Parmar.* In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However,
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> Mr Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

In this case also, except the oral testimony of the workman, there is no other evidence. So, from the above decision, it is clear that it is for the workman to lead and establish by cogent evidence about his working with the management for more than 240 days. The evidence of WW-2 goes to show that he worked as a Work Inspector from 01-12-1979 to 31-07-1995 and the claimant-first respondent herein worked under him from 01-09-1984 till the end of 31-10-1984. Whereas WW-3 stated that the petitioner worked as an N.M.R worker on daily wages from 01-07-1983 to 30-08-1984 in Chimakurthi II Division, but this evidence is quite contrary to the evidence of WW-2. The workman has not adduced any evidence with regard to his working consequent on his transfer to Maddipadu from Chimakurthi Division. If the evidence of WW-2 is taken into consideration, it is clear that the workman-first respondent herein has worked less than 240 days. If the evidence of WW-2 was disbelieved by the Labour Court, it would be a different matter. That evidence was neither appreciated nor referred to in the award. So also, the evidence of MW-1 has not been considered. According to MW-1, the petitioner worked at Maddipadu from 01-09-1984 to 20-09-1984. But he admitted in the cross-examination that as per Ex.W1 the workman-first respondent herein joined as Head Mazdoor on 01-07-1983. A perusal of Ex.W1 shows that the first respondent joined as a Head Mazdoor on 01-07-1983 at Chimakurthi. Thereafter, he joined as Head Mazdoor in Maddipadu on 01-09-1984. As per Ex.W2, it is clear that by 10-10-1984, the first respondent was working with the petitioner. The respondent-petitioner herein also produced Exs.M-6 and M-7, which clearly go to show that the first respondent worked less than 240 days. The first respondent has not produced any document to show that he worked for more than 240 days. Since the findings of the Labour court are not based upon any evidence, the award of the Labour Court is perverse.

The conclusions must be based on existing and relevant material. The

evidential material must be such that it violates section 25-F of the Industrial Disputes Act (for short 'the Act') with some degree of diligence.

Since the first respondent miserably failed to prove or establish that he worked for more than 240 days with the petitioner, the question of application of provisions under Section 25 (F) of the Act does not arise. Having placed burden on the writ petitioner to establish that the first respondent worked with them for more than 240 days and the writ petitioner failed to establish the same, the Labour Court came to the conclusion that the first respondent worked for more than 240 days prior to 28-03-1985. Such finding is perverse and contrary to the evidence on record. Therefore, the award under challenge is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the impugned award passed by the Labour Court. No order as to costs.

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JUSTICE K.C.BHANU

Date: 13-07-2005.

YCR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice

On this Wednesday the thirteenth of July Two Thousand and five.

To

1. The Executive Engineer,
   N.S.Canals --I Division, ONGOLE,
   Prakasham District.

2 The Presiding Officer,
   Industrial Tribunal --Cum-- Labour Court., Guntur,

3. 2 CCs to G.P for Labour, High Court Building, Hyderabad (OUT)

4. 2 C.D. copies.